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9

10 UNITED STATES DISTRICT COURT  
11 SOUTHERN DISTRICT OF CALIFORNIA

12 e.Digital Corporation,  
13 Plaintiff,

14 v.

15 Cactus Technologies Limited; Cactus  
16 USA; and Harper & Two, Inc.

17 Defendants.  
18

**'15CV0140 GPC BGS**

**COMPLAINT FOR PATENT  
INFRINGEMENT**

**DEMAND FOR JURY TRIAL**

19 Plaintiff e.Digital Corporation (“e.Digital” or “Plaintiff”), by and through its  
20 undersigned counsel, complains and alleges against Defendant Cactus  
21 Technologies Limited and Defendant Cactus USA (collectively referred to  
22 hereafter “Cactus”); and, Defendant Harper & Two Inc. (“Harper & Two”) (all  
23 collectively referred to as “Defendants”) as follows:

24 **NATURE OF THE ACTION**

25 1. This is a civil action for infringement of a patent arising under the  
26 laws of the United States relating to patents, 35 U.S.C. § 101, *et seq.*, including,  
27 without limitation, 35 U.S.C. §§ 271, 281. Plaintiff e.Digital seeks a preliminary  
28 and permanent injunction and monetary damages for the infringement of its U.S.

1 Patent No. 5,839,108.

2 **JURISDICTION AND VENUE**

3 2. This court has subject matter jurisdiction over this case for patent  
4 infringement under 28 U.S.C. §§ 1331 and 1338(a) and pursuant to the patent laws  
5 of the United States of America, 35 U.S.C. § 101, *et seq.*

6 3. Venue properly lies within the Southern District of California  
7 pursuant to the provisions of 28 U.S.C. §§ 1391(b), (c), and (d) and 1400(b). On  
8 information and belief, Defendant conducts substantial business directly and/or  
9 through third parties or agents in this judicial district by selling and/or offering to  
10 sell the infringing products and/or by conducting other business in this judicial  
11 district. Furthermore, Plaintiff e.Digital is headquartered and has its principal  
12 place of business in this district, engages in business in this district, and has been  
13 harmed by Defendant's conduct, business transactions and sales in this district.

14 4. This Court has personal jurisdiction over Defendant because, on  
15 information and belief, Defendant transacts continuous and systematic business  
16 within the State of California and the Southern District of California. In addition,  
17 this Court has personal jurisdiction over the Defendant because, on information  
18 and belief, this lawsuit arises out of Defendant's infringing activities, including,  
19 without limitation, the making, using, selling and/or offering to sell infringing  
20 products in the State of California and the Southern District of California. Finally,  
21 this Court has personal jurisdiction over Defendant because, on information and  
22 belief, Defendant has made, used, sold and/or offered for sale its infringing  
23 products and placed such infringing products in the stream of interstate commerce  
24 with the expectation that such infringing products would be made, used, sold  
25 and/or offered for sale within the State of California and the Southern District of  
26 California.

27 5. Upon information and belief, certain of the products manufactured by  
28 Defendant have been and/or are currently sold and/or offered for sale via its

1 distributors such as Cactus USA and Harper & Two to customers and/or end-users  
2 located within the State of California.

3 **PARTIES**

4 6. Plaintiff e.Digital is a Delaware corporation with its headquarters and  
5 principal place of business at 16870 West Bernardo Drive, Suite 120, San Diego,  
6 California 92127.

7 7. Upon information and belief, Defendant Cactus Technologies Limited  
8 is a business entity organized and existing under the laws of the People's Republic  
9 of China ("China"), with an office and principal place of business located at Suite  
10 C, 15/F, Capital Trade Center, 62 Tsun Yip Street, Kwun Tong,. Kowloon, Hong  
11 Kong, China.

12 8. Upon information and belief, Defendant Cactus USA is a corporation  
13 registered and lawfully existing under the laws of the State of Texas, with an office  
14 and principal place of business located at 3112 Windsor Road , Suite A356.  
15 Austin, Texas 78703. Upon information and belief, Defendant Cactus USA is a  
16 distributor of the accused Cactus products.

17 9. Upon information and belief, Defendant Harper & Two Inc. is a  
18 corporation registered and lawfully existing under the laws of the State of  
19 California with an office and principal place of business located at 2937 Cherry  
20 Ave. in Signal Hill, CA 90755. Upon information and belief, Defendant Harper &  
21 Two is a distributor of the accused Cactus products in Southern California.

22 **THE ASSERTED PATENT**

23 10. On November 17, 1998, the United States Patent and Trademark  
24 Office duly and legally issued United States Patent No. 5,839,108 ("the '108  
25 patent") entitled "Flash Memory File System In A Handheld Record And Playback  
26 Device," to its named inventors Norbert P. Daberko and Richard K. Davis.  
27 Plaintiff e.Digital is the assignee and owner of the entire right, title and interest in  
28 and to the '108 patent and has the right to bring this suit for damages and other

1 relief. A true and correct copy of the '108 patent is attached hereto as Exhibit A.

2 **COUNT ONE**

3 **INFRINGEMENT OF THE '108 PATENT BY DEFENDANT**

4 11. Plaintiff re-alleges and incorporates by reference each of the  
5 allegations set forth in paragraphs 1 through 10 above.

6 12. The accused products include but are not limited to Defendant's Flash  
7 Memory Storage products including but not limited to its eMMC, MicroSD,  
8 Compact Flash, SD card, SATA SSD Series, mSATA, CFast, mSATA, Industrial  
9 Grade IDE DOM (Disk-On-Module), 806 Series SDChip, and/or NAND  
10 Controller products. The primary and substantial purpose of the accused products  
11 is to write to and store data in electronic format in non-volatile flash memory.

12 13. Defendant has directly and indirectly infringed and is directly and  
13 indirectly infringing Claim 1 of the '108 patent in violation of 35 U.S.C. § 271, *et*  
14 *seq.*, by making, using, offering for sale, selling in the United States and/or  
15 importing into the United States without authority, the accused products identified  
16 above. Claim 1 of the '108 patent teaches a method of memory management for a  
17 non-volatile storage medium. The method comprises several steps, which generally  
18 involves, without limitation, writing electronic data segments from volatile,  
19 temporary memory to a non-volatile, long-term storage medium by linking data  
20 segments according to a number of specified steps.

21 14. Plaintiff alleges that at least as of the date of the filing of the  
22 originally filed complaint in this matter, if not sooner, Defendant knew or should  
23 have known of the existence of Claim 1 of the '108 patent and the fact that the  
24 accused products infringe said Claim 1.

25 15. Plaintiff alleges that Defendant sold, sells, offers to sell, ships, or  
26 otherwise delivers the accused products to customers or end-users with all the  
27 features required to infringe Claim 1 of the '108 patent. Upon information and  
28 belief, Defendant knows that the accused products infringe Claim 1 of the '108

1 patent and intends to induce third parties to include its customers and end-users to  
2 also infringe Claim 1 of the '108 patent.

3 16. Upon information and belief, the accused products, alone or in  
4 combination with other products, directly or, alternatively, under the doctrine of  
5 equivalents practice each of the limitations of independent Claim 1 of the '108  
6 patent when they are used for their normal and intended purpose of writing to and  
7 storing electronic data on non-volatile memory. Thus, Defendant directly infringes  
8 Claim 1 of the '108 patent in violation of 35 U.S.C. § 271(a) when it demonstrates,  
9 tests or otherwise uses the accused products in the United States.

10 17. By way of example, certain website(s) publish the Defendants'  
11 datasheets and descriptions of the features and functionality of the accused  
12 products. An example can be found on the internet at [http://www.cactus-](http://www.cactus-tech.com/en/resources/brochures-manuals-and-technical-data)  
13 [tech.com/en/resources/brochures-manuals-and-technical-data](http://www.cactus-tech.com/en/resources/brochures-manuals-and-technical-data) where upon  
14 information and belief, customers and end-users are provided information  
15 concerning how to use of the accused products in a way that infringes Claim 1.  
16 Such conduct evidences Defendant's act of direct infringement of Claim 1 of the  
17 '108 patent.

18 18. Plaintiff also alleges on information and belief that Defendant uses,  
19 makes, sells, offers to sell and/or imports the accused products knowing that they  
20 will be used by its customers and end-users for writing and storing electronic data  
21 to non-volatile memory utilizing the steps described in Claim 1 of the '108 patent.  
22 Defendant's product literature, videos, manuals, blogs, White Papers, newsletters,  
23 articles, instructional materials, and videos advertise and encourage customers to  
24 use the accused product(s) knowing that the accused products utilize the methods  
25 of memory management taught by Claim 1 of the '108 patent and in a manner it  
26 knows infringes upon Claim 1 of the '108 patent.

27 19. Defendant also provides operating manuals, user or guides,  
28 instructional and "how-to" articles or blogs or newsletters, or other instructional

1 and/or informational material that instruct customers and end-users on how to  
 2 connect the accused products and use them as non-volatile storage devices for  
 3 electronic data. Among other things, Defendant's informational materials lay out  
 4 step-by-step instructions on how to write data into the memory of the accused  
 5 products – a process that utilizes the method disclosed in Claim 1 of the '108  
 6 patent and which Defendant knows (at the least as of the filing of the original  
 7 complaint if not sooner) infringes the method taught in Claim 1 of the '108 patent.  
 8 Plaintiff believes that Defendant directs consumers and end-users to consult and  
 9 utilize such instructional material.

10 20. Plaintiff believes and thereupon alleges that Defendant is aware that  
 11 its customers and end-users are using the accused products in an infringing manner  
 12 based on, among other things, the fact that Defendant encourages its customers and  
 13 end-users to use the accused products in an infringing manner as set forth in the  
 14 preceding Paragraphs.

15 21. As alleged above, incorporated herewith, and based upon information  
 16 and belief, Plaintiff alleges that Defendant, without authority, has induced and  
 17 continues to induce infringement of the '108 patent in violation of 35 U.S.C. §  
 18 271(b) inasmuch as:

- 19 a. The accused products infringe Claim 1 during the normal use of  
 20 the accused products by Defendant's customers and/or end-users;
- 21 b. Defendant has known and has been continuously aware of the  
 22 '108 patent since at least the filing of the original complaint in this  
 23 action, if not sooner;
- 24 c. Defendant has acted in a manner that encourages and continues to  
 25 encourage others to infringe Claim 1 of the '108 patent by, among  
 26 other things, intentionally instructing and/or encouraging  
 27 customers and end-users to use the accused products in a manner  
 28 that Defendant knows or should have known would cause them to

1 infringe the '108 patent;

2 d. Defendant sells, distributes, and supplies the accused products to  
3 customers and end-users with the intent that the products be used  
4 in an infringing manner;

5 e. Defendant provides operating manuals, guides, or other  
6 instructional and/or informational material designed to instruct  
7 customers and end-users to use the products in an infringing  
8 manner; and,

9 f. Defendant advertises, markets, and promotes the use of the  
10 accused products in an infringing manner.

11 22. As alleged above, incorporated herewith, and based upon information  
12 and belief, Plaintiff alleges that Defendant has contributed and continues to  
13 contribute to the infringement of Claim 1 of the '108 patent in violation of 35  
14 U.S.C. § 271(c) inasmuch as:

15 a. The accused products infringe Claim 1 of the '108 patent during  
16 the normal use of the accused products by Defendant's customers  
17 and/or end-users;

18 b. Defendant has known and has been continuously aware of the  
19 '108 patent since at least the filing of the original complaint in this  
20 action, if not sooner;

21 c. Defendant imports into the United States, sells and/or offers to  
22 sell within the United States products that (a) practice the method  
23 of memory management of Claim 1 of the '108 patent; and, (b)  
24 Defendant knows that the same constitute material infringing  
25 component(s) of the accused products, which were made and/or  
26 especially adapted for use in the accused products;

27 d. The memory management component(s) and methods of the  
28 accused products are not staple articles of commerce suitable for

1 substantial non-infringing use with respect to the '108 patent; and,  
 2 e. Defendant sells, has sold, and/or has supplied the accused  
 3 products knowing of Plaintiff's '108 patent and knowing that the  
 4 accused products incorporate Plaintiff's patented method and/or  
 5 were specially adapted for use in a way which infringes the '108  
 6 patent.

7 23. As alleged above, Plaintiff alleges that Defendant had notice of the  
 8 '108 patent and knowledge of infringement of Claim 1 of the '108 patent since at  
 9 least the filing of the original complaint in this matter, if not sooner. Defendant has  
 10 and continues to sell products that practice the '108 patent after acquiring  
 11 knowledge of infringement.

### 12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiff prays for relief and judgment as follows:

14 1. That Defendants be declared to have infringed the Patent-in-Suit;

15 2. That Defendants, Defendants officers, agents, servants, employees,  
 16 and attorneys, and those persons in active concert or participation with them, be  
 17 preliminarily and permanently enjoined from infringement of the Patent-in-Suit,  
 18 including but not limited to any making, using, offering for sale, selling, or  
 19 importing of unlicensed infringing products within and without the United States;

20 3. Compensation for all damages caused by Defendants' infringement of  
 21 the Patent-in-Suit to be determined at trial;

22 4. A finding that this case is exceptional and an award of reasonable  
 23 attorneys fees pursuant to 35 U.S.C. § 285;

24 5. Granting Plaintiff pre-and post-judgment interest on its damages,  
 25 together with all costs and expenses; and,

26 6. Awarding such other relief as this Court may deem just and proper.

**HANDAL & ASSOCIATES**

Dated: January 21, 2015

By: /s/Anton N. Handal  
Anton N. Handal  
Pamela C. Chalk  
Gabriel G. Hedrick  
Attorneys for Plaintiff  
e.Digital Corporation

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a trial by jury on all claims.

**HANDAL & ASSOCIATES**

Dated: January 21, 2015

By: /s/Anton N. Handal  
Anton N. Handal  
Pamela C. Chalk  
Gabriel G. Hedrick  
Attorneys for Plaintiff  
e.Digital Corporation

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing document has been served on this date to all counsel of record, if any to date, who are deemed to have consented to electronic service via the Court's CM/ECF system per CivLR 5.4(d). Any other counsel of record will be served by electronic mail, facsimile and/or overnight delivery upon their appearance in this matter.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct. Executed this 21<sup>st</sup> day of January, 2015 at San Diego, California.

**HANDAL & ASSOCIATES**

Dated: January 21, 2015

By: /s/Anton N. Handal  
Anton N. Handal  
Pamela C. Chalk  
Gabriel G. Hedrick  
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